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## AHMAD JAMALUDDIN ABD MAJID

**v.**

## RAFIDAH AZIZ & ORS

B

HIGH COURT MALAYA, TAIPING
ZAKARIA SAM J
[ELECTION PETITION NO: 26-02-2008]
15 OCTOBER 2008

C ***ELECTION:*** *Petition - Validity of nomination papers - Objections raised by petitioner - Failure to sign two copies of nomination paper - Whether contravened reg. 4(3) and 4(5) Elections (Conduct of Elections) Regulations 1981 - Second respondent's failure to use his powers to reject nomination paper - Whether contravened reg. 4(6) Elections (Conduct of*
D *Elections) Regulations 1981 - Failure to make objection to nomination paper and failure to provide grounds for rejecting petitioner's objections - Whether contravened reg. 7(3) and 7(4) Elections (Conduct of Elections) Regulations 1981 - Whether requirement of s. 32(b) Elections Offences Act 1954 satisfied - Whether Election Judge no longer has jurisdiction to*
E *declare an unsuccessful candidate as duly returned - Whether Election Court a creature of statute and subject to limitations imposed by statute - Whether petition failed to comply with r. 4(1)(b) Election Petition Rules 1954 - Whether petition disclosed any cause of action to sustain prayers sought*

F

The first respondent submitted her nomination papers in triplicate to the returning officer (second respondent) for the Parliamentary constituency of P67 Kuala Kangsar, Perak as required by reg. 4(3) of the Elections (Conduct of Elections) Regulations 1981. The
G petitioner filed this petition under reg. 7 raising a total of three objections, namely (a) that the first respondent contravened reg. 4(3) and 4(5) when she failed to sign the two copies of the nomination paper submitted to the returning officer; (b) that the second respondent contravened reg. 4(6) by failing to use his
H powers to reject the nomination paper based on the failure of the first respondent to sign two out of the three copies of the nomination paper; (c) that the second respondent contravened reg. 7(3) by failing to make an objection to the nomination paper of the first respondent and reg. 7(4) by failing to provide grounds
I for rejecting the petitioner's objection on the said point. Therefore, the nomination papers of the first respondent ought to have been rejected on nomination day and no contest should have been declared by the second respondent. He claimed that the matter

could be rectified if the Election Court used its inherent powers to declare Dr Haji Khairuddin Dato Haji Abdul Malik as duly elected or ought to have been returned. The second respondent overruled all the objections and declared an election to be contested between the first respondent and Dr Haji Khairuddin Dato Haji Abdul Malik. In that election, the first respondent was returned with a majority of 1458 votes. The respondents filed this motion praying that this petition be struck out with costs on the following grounds (i) that the petition was defective for failure to comply with r. 4(1)(b) Election Petition Rules 1954 ('Rules') in that the facts and grounds stated were unable to sustain the prayers sought and (ii) that the petition did not disclose any cause of action or was 'frivolous and vexatious' or was 'an abuse of the court's process.'

**Held (dismissing the petition):**

**(1)** The signature of the first respondent on the first copy expressly signified her intention to accept the nomination. The fact that the first respondent came personally to submit her nomination papers along with her proposer and seconder also expressly signified her intention to accept the nomination to contest as a candidate for the constituency. One copy of the nomination papers was completely and correctly filled up whilst the other two copies were not signed by her. Therefore the defect alleged could not be of a substantial nature and become an obstacle to an otherwise good and proper election under reg. 4(6A). The second respondent was entitled to look at the nomination paper that was correctly filled up to identify the defect and determine whether that defect was substantial in nature or otherwise. The second respondent found the defect to be merely technical and of no consequence as one of the nomination papers were completely and correctly filled up. (para 14)

**(2)** The mandatory supporting documents presented together with the nomination papers were in themselves very cogent evidence that the first respondent had consented to her nomination as a candidate for the constituency. Even assuming for a moment that the second respondent had wrongfully accepted the nomination papers, such non-compliance would not affect the result of the election and therefore the requirements of s. 32(b) of the Election Offences Act 1954 ('the Act') would not be satisfied. (para 16)

**(3)** Regulations 7(1)(c) and 7(1)(d) referred to the status of the candidate and not the status of a nomination paper. There was no allegation that the first respondent was not eligible to be a member of the Dewan Rakyat or was disqualified to be a member of the Dewan Rakyat as expressly provided under art. 47 and 48 of the Federal Constitution. A candidate may, if he does not fill out his nomination normal paper properly, have his nomination paper rejected but that does not mean that the candidate is not capable or is disqualified from being a member of Dewan Rakyat. The petitioner had failed to show a nexus between the complaints raised and the law alleged to have been transgressed. (para 22)

**(4)** Regulation 7(1) and 7(5) read with s. 32(b) of the Act contemplates that there was an objection raised that came within the ambit of reg. 7(1) and that the second respondent made a decision overruling the objection and in doing so did not comply with a provision of law relating to nomination paper. It was therefore incumbent on the petitioner to show that (a) an objection was raised; (b) state the paragraph in reg. 7(1) that the objection fell within; (c) state that the returning officer overruled the objection and (d) show the non-compliance with some provision of law relating to nomination papers that were not complied with by the returning officer when he made that decision. The petitioner in his petition merely stated that the second respondent failed to use his power under reg. 4(6) to reject the nomination papers of the first respondent because two out of three nomination papers did not bear the signature of the first respondent, but he failed to highlight any of the four requirements mentioned above. In the circumstances, the petitioner had failed to show a nexus between the complaints raised and the first requirement of s. 32(b) of the Act. In absence of the facts and grounds concerning reg. 7(1) and 7(5) the petitioner had failed to satisfy r. 4(1)(b) as there was no cause of action to sustain the prayers sought. (paras 23 & 24)

**(5)** The petitioner had made allegations that the second respondent himself failed to raise an objection under reg. 7(3) against the nomination paper of the first respondent although he knew that two of the nomination papers did not contain the signature of the first respondent and that the second respondent had not prepared a written decision and written

grounds for the decision as required by law. Both the complaints put forth by the petitioner did not fall within any of the paragraph in reg. 7(1). Failure of the second respondent to raise objections, prepare written decisions and prepare written grounds for those decisions were not provided for in reg. 7(1). Regulation 7(1) is exhaustive and the petitioner could not create new grounds not provided. Secondly, the petitioner had also failed to bring his factual situation under reg. 7(5) which referred to decisions by the returning officer in rejecting or accepting objections. Therefore the petitioner had failed to show a nexus between his narrated facts and the provisions of law he alleged were transgressed. As such there was a failure to satisfy s. 32(b) of the Act and consequently r. 4(1)(b). (paras 25, 26 & 27)

**(6)** The contention of the petitioner that the Election Court has inherent powers to declare Dr Haji Khairuddin Dato' Hj Abdul Malik as the candidate that ought to be returned was a prayer that was no longer open to the Election Court as this relief was expressly deleted from s. 3(c) of the Act with effect from 16 January 2003. It is the express intention of the legislature that the Election Judge no longer had the jurisdiction to declare an unsuccessful candidate as duly returned anymore unless the prayer was for a scrutiny under s. 35(d) of the Act. In this case the petitioner was not asking for a scrutiny. Therefore by asking a prayer or relief that was no longer open, the petitioner had failed to satisfy r. 4(3). The petitioner could only conclude with a prayer that was allowed under s.35 of the Act and not any other relief, especially a relief sought to be derived from the inherent powers of the Election Court. The Election Court is a creature of statute and is subject to limitations imposed by statute. There was a failure to satisfy s. 32(b) of the Act and consequently r. 4(1)(b). (paras 30 & 31)

**(7)** Under s. 32(b) of the Act, it was essential for the petitioner to not only plead non-compliance with the provisions of any written law relating to the conduct of any election but must also demonstrate that the alleged non-compliance caused the election to be not conducted in accordance with the principles laid down in such written law. It was essential for the pleadings to disclose that some principles pertaining to the conduct of the election had been breached. This was plainly not the case here. No principle of election law had been breached. (paras 40 & 41)

**Case(s) referred to:**

*Gan Joon Zin v. Fong Kui Lun & Ors [2004] 4 CLJ 729 FC* ***(refd)***

*Hussein Ahmad v. Tengku Razaleigh Tengku Mohd Hamzah & Ors [1995] Case No 92, Tunku Sofiah's Malaysia Election Law 1550* ***(refd)***

*Isahak Hamid v. Mustapha [1965] 1 LNS 63 HC* ***(refd)***

*Nobert Choong Kai Chong v. Mohamed Idris Hj Ibrahim & Anor [1978] 1 LNS 133 HC* ***(refd)***

*Sulaiman Pengiran Atok v. The Sabah State Election Officer & Ors [1999] (Case No 114 Tunku Sofiah's Malaysia Election Laws) 1892* ***(refd)***

*Wong Chong Sang v. Nga Kor Ming & Ors (Federal Court Civil Appeal No 01-24-2004 (A)* ***(refd)***

**Legislation referred to:**

Elections (Conduct of Elections) Regulations 1981, regs. 4(3), (4), (5), (6A), 7(1)(c), (d), (3), (4), (5), (6), 28

Election Offences Act 1954, ss. 32(b), 35(c), (d)

Election Petition Rules 1954, r. 4(1)(b)

Federal Constitution, arts. 47, 48

*For the petitioner - Hj Mohd Arif Yusoff (Mohamed Hanifa Maidin, Aminudin Zulkifli, Zulqarnain Lukman, Hisham Fauzi, Nasrul Mohamad, Hatman Abdullah, Mohd Abdul Rashid Yah & Zulmi Sabri with him); M/s Zainal Rijal Talha & Amir*

*For the 1st respondent - Firoz Hussesin (Mohd Hafarizam Harun, Syed Faisal Syed Abdullah, Abu Bakar As-Sidek, Badrul Hishah Abdul Wahap, Mohd Adli Ithnin with him) M/s Ong Hanim & Badrul*

*For the 2nd & 3rd respondent - Siti Salwa Musa SFC (Andi Razali Jaya A Dadi & Nurul Farhana Khalid FC's with her); M/s Amarjeet Singh SFC, AG's Chamber*

*Reported by Suhainah Wahiduddin*

## JUDGMENT

**Zakaria Sam J:**

**The Undisputed Facts**

**[1]** On 24 February 2008 the 1st respondent submitted her nomination papers in triplicate to the returning officer (2nd respondent) for the Parliamentary constituency of P67 Kuala Kangsar, Perak as required by reg. 4(3) of the Elections (Conduct of Elections) Regulations 1981 (hereinafter all regulations stated refer to this Regulations).

**The Election Petition**

**[2]** The petitioner filed this petition under reg. 7 raising a total of three objections, namely:

(a) In para. 4.1 – that the 1st respondent contravened reg. 4(3) and 4(5) when she failed to sign the two copies of the nomination paper submitted to the returning officer.

(b) In para. 4.2 – that the 2nd respondent contravened reg. 4(6) by failing to use his powers to reject the nomination paper based on the failure of the 1st respondent to sign two out of the three copies of the nomination paper;

(c) In para. 4.3 – that the 2nd respondent contravened reg. 7(3) by failing to make an objection to the nomination paper of the 1st respondent and reg. 7(4) by failing to provide grounds for rejecting the petitioner's objection on the said point,

therefore the nomination papers of the 1st respondent ought to have been rejected on nomination day and no contest should have been declared by the 2nd respondent. He claims that the matter can be rectified if the Election court uses its inherent powers to declare Dr. Haji Khairuddin bin Dato' Haji Abdul Malik as duly elected or ought to have been returned and towards that objective prays for the following reliefs:

(i) a declaration that the election of the 1st respondent is void;

(ii) a declaration that the 1st respondent was not duly elected or ought not to have been returned, and

(iii) a declaration that Dr. Haji Khairuddin bin Dato' Haji Abdul Malik was duly elected or ought to have been returned.

**[3]** The 2nd respondent overruled all the objections and declared an election to be contested between the 1st respondent and Dr. Haji Khairuddin bin Dato' Haji Abdul Malik.

**[4]** In that election, the 1st respondent was returned with a majority of 1458 votes.

**The Notice Of Motion By The 2nd And 3rd Respondent**

**[5]** The 2nd and 3rd respondents filed this motion praying that this petition be struck out with costs on the following grounds:

A (a) That the petition is defective for failure to comply with r. 4(1)(b) Election Petition Rules, 1954 (hereinafter all rules stated refer to this Rules) in that the facts and grounds stated are unable to sustain the prayers sought; or

B (b) That the petition does not disclose any cause of action or is 'frivolous and vexatious' or is 'an abuse of the court's process'.

**The Preliminary Objection By The 1st Respondent**

C **[6]** The 1st respondent on the other hand filed a notice of preliminary objection (L13) raising three issues:

(i) Pempetisyen telah gagal mematuhi kehendak Kaedah 15 Kaedah-Kaedah Petisyen Pilihanraya 1954 berdasarkan alasan-
D alasan bahawa Notis Pengemukaan Petisyen dan Petisyen dengan sengaja tidak diserahkan oleh Pempetisyen dalam tempoh 15 hari dari tarikh pemfailan Petisyen;

(ii) Pempetisyen telah gagal mematuhi kehendak kaedah 4(c) Kaedah-kaedah Petisyen Pilihanraya 1954 berdasarkan alasan
E bahawa Petisyen tersebut tidak berasaskan kerana mana-mana alasan sepertimana yang diperuntukkan oleh seksyen 32 Akta Kesalahan Pilihan Raya 1954 (Akta 5).

(iii) Pempetisyen telah gagal untuk menunjukkan bagaimana ketidakpatuhan peruntukan mana-mana undang-undang
F bertulis yang berhubungan dengan perjalanan mana-mana pilihan raya telah menjejaskan keputusan pilihan raya sepertimana yang diperuntukkan di bawah Seksyen 32(b) Akta kesalahan Pilihan Raya 1954.

G **[7]** Since both the above (ii) and (iii) issues are similar to the motion filed by the 2nd and 3rd respondent, I would deal with these issues together first. The first ground of the prelimanary objection is to be dealt with separately later.

**Findings**

H

**[8]** To support the contention in para. 4.1 that the 1st respondent contravened reg. 4(3) and 4(5) when the 1st respondent failed to sign the two copies of the nomination paper submitted to the 2nd respondent, the learned counsel for the
I petitioner cited the case of *Nobert Choong Kai Chong v. Mohamed Idris bin Haji Ibrahim* [1978] 1 LNS 133, where Harun J (as he then was) held that:

> The fact that one copy of the Nomination Paper had been completely filled up does not validate the other two copies because Regulation 4(2) requires nomination papers to be submitted in triplicate. Further the same regulation provides "Each nomination paper shall be signed ..." which means that every copy of the Nomination Paper must comply with the Regulations. The electors of the constituency who were at the foyer outside the Town Hall and in the Nomination Centre must be able to test whether the electors named in the Nomination Papers are qualified to assent. I further find that the omission is not an inaccurate description which can be cured by Regulation 28: *Baldwin & Ors v. Ellis & Ors*, *supra*, I therefore hold that the Returning Officer was right in rejecting the Nomination Papers of the petitioner on this ground.

**[9]** The answer to the above contention could be found in *Sulaiman b. Pengiran Atok v. The Sabah State Election Officer & 2 Ors* [1999] (Case No. 114 Tunku Sofiah's Malaysia Election Laws) 1892 where Azhar Hj. Maah J held that:

> I fully agree with the decision of Harun J in Nobert Choong's case that it was imperative that the nomination papers must be submitted in triplicate, and there's no two ways, about it. That was the law at that time. However, with the introduction of paragraph 6 of regulation 4 into the 1981 Regulations the imperative and strict requirement of the old regulations has been neutralised. There is now a power rather than a duty given to the Returning officer to reject any nomination papers, which do not fully comply with the regulation, depending on the circumstances and merit of each case.

**[10]** This new reg. 4(6) which reads:

> Failure to comply with subregulation (3), (4) or (5) shall render the nomination paper liable to be rejected by the returning officer [subs PU(A) 67/04].

confers a discretion on the returning officer to accept or reject papers that do not comply with reg. 4(3), (4) or (5).

**[11]** This issue had been dealt with by Azmel Maamor J in *Hussein bin Ahmad v. Tengku Razaleigh b. Tengku Mohd Hamzah & 3 Ors* [1995] Case No. 92, Tunku Sofiah's Malaysia Election Law 1550 where the learned judge held that:

> In this paragraph (6) I agree with the submission of Dato' Zaki when he said the words 'liable to be rejected' makes it not mandatory for the returning officer to reject the nomination paper. From the manner it is worded the returning officer is given a discretion whether to reject the nomination paper or otherwise'.

A [at page 1552]

…

In my view the spirit and intention of Regulation 4 read together with regulation 28 of the Elections (Conduct of Elections),
B Regulation 1981 is for the returning officer to be more favourable towards accepting nomination papers rather than rejecting them. I hold this view because the proviso to paragraph 6 gives 3 instances where it becomes mandatory for the returning officer to accept the nomination papers even with the existence of errors.
C Likewise Regulation 28 makes it compulsory for the returning officer to accept the nomination paper even though it contains certain errors'

The rejection of nomination papers by the returning officer under paragraph (6) in respect of errors contained in paragraph (3)(4)
D or (5) is not mandatory but discretionary. Such discretion must be exercised judiciously'.

[at page 1553].

**[12]** Regulation 28 further reinforces reg. 4(6A) with respect to
E any 'error'. Error under reg. 28 had been defined to include omission. Here the omission by the 1st respondent was to sign the other two copies of her nomination papers.

**[13]** The signature of the 1st respondent on the first copy
F expressly signifies her intention to accept the nomination. The fact that the 1st respondent came personally to submit her nomination papers along with her proposer and seconder also expressly signifies her intention to accept the nomination to contest as a candidate for the constituency (see para. 4 of the affidavit
G sokongan by the 2nd respondent – lamp. 11).

**[14]** One copy of the nomination paper is completely and correctly filled up whilst the other two copies were not signed by her. Therefore the defect alleged cannot be of substantial nature and become an obstacle to an otherwise good and proper election
H under reg. 4(6A). The 2nd respondent is entitled to look at the nomination paper that is correctly filled up to identify the defect and determine whether that defect is substantial in nature or otherwise. The 2nd respondent found the defect to be merely technical and of no consequence as one of the nomination papers
I is completely and correctly filled up (see paras 15, 16 and 17 of the 2nd respondent's affidavit sokongan (lamp. 11).

**[15]** In *Wong Chong Sang v. Nga Kor Ming & 2 Ors* (Federal Court Civil Appeal No. 01-24-2004 (A) the Federal Court held that:

> In any event, there should be no restriction on the part of the returning officer in looking at the other two copies of the nomination paper which had been correctly filled up by the 1st respondent. As the law requires the nomination paper to be filed in triplicate, it must mean that the three copies form part and parcel of the whole nomination paper. *As such, it is reasonable to expect the returning officer to examine them contemporaneously. Thus, in a situation such as the present where one of the three copies was found to be defective, the returning officer should be allowed to look at the other two correct copies in order to identify the defect*. Given the peculiar factual circumstances, the said defect cannot be regarded as substantial in nature and therefore should not become an obstacle to an otherwise good and proper election process. That being the position, the 2nd respondent was correct in law and on the facts in rejecting the objection raised by the appellant on this score. (emphasis added)

**[16]** The mandatory supporting documents presented together with the nomination papers are in themselves very cogent evidence that the 1st respondent had consented to her nomination as a candidate for the constituency. The supporting documents are:

i) the receipts from the State Election Office as deposit of being a candidate for a parliamentary seat and as deposit for election campaign materials (see exh. 'MG4' to lamp. 11).

ii) 'Surat Akuan Berkanun' which was affirmed, signed and stamped by the 1st respondent declaring her eligibility to be elected as a member of the Dewan Rakyat (exh. 'MG5' to lamp. 11), and

iii) The 'Surat Menggunakan Simbol Dacing' atau 'Neraca' (exh. MG6 to lamp. 11)

**[17]** The petitioner alleges in paras. 5 and 6 of the petition that the wrongful acceptance of the nomination paper as pleaded in paragraphs 4.1, 4.2, and 4.3 had deprived Dr. Haji Khairuddin bin Dato' Haji Abdul Malik his right to be returned uncontested.

**[18]** Even assuming for a moment that the 2nd respondent had wrongfully accepted the nomination papers, such non-compliance would not affect the result of the election and therefore the requirements of s. 32(b) of the Election Offences Act, 1954 (hereinafter 'the Act') would not be satisfied.

**[19]** The Federal Court in *Wong Chong Sang*'s case *(supra)* had cited with approval the observations expressed by Ismail Khan J (as he then was) in *Isahak Hamid v. Mustapha* [1965] 1 LNS 63:

> Applying the above principle, can it be said that the failure of the returning officer to reject the nomination papers of the respondent resulted in a situation where it appears that the election was not conducted in accordance with the principles of the election law? The word 'election' to my mind comprises the many steps in the process whereby a candidate is returned from the issuing of a notification calling an election up to the declaration of the results. Nomination of a candidate is only one such step in this process. In this case, it is true that through the returning officer's improper acceptance of the respondent's nomination papers, the respondent was allowed to go to the poll and was elected. But there was a free contest between the respondent and the petitioner with the result that the former polled a majority of votes. No allegation of corrupt motives on the part of any election official or improper practices is made in this case. The petitioner's only complaint is the non-compliance of the returning officer with one of the provisions of the election law, *viz*., regulation 4(3). It is not suggested that the method of voting was not by ballot or that the majority of the voters had been prevented by corruption, coercion or undue influence or through lack of the necessary facilities from voting freely according to their preference. Nor is any complaint made of a fraudulent counting of votes or a violation of the secrecy of the ballot.
>
> It is true that in the *Haverfordwest* case [1874], L.R 9 C.P. 720, an election was held to be void as the returning officer had improperly refused to notice the nomination of one of the only two candidates for an election of a member for a borough to Parliament. There Brett J. said:
>
> > The determining whether one or two candidates are put for election is a matter which goes so entirely to the substance of the election that what the returning officer did in refusing to take notice of Mr. Davies' nomination vitiates the election.
>
> That is a case of an improper rejection of a nomination, not as it is here the improper acceptance of a nomination. There is an important distinction between the two. In the former the whole constituency was deprived of its right to vote for a candidate who was legally entitled to go to the poll. In the latter the two candidates were put up for election and everyone of the electorate had a chance to vote for the candidate of his choice.

These considerations lead me to the conclusion that despite the transgression of the law by the returning officer the election in this case had substantially been conducted in accordance with the principles of the law. I also hold that the non-compliance of the law by the returning officer had not affected the result of such election, that is, the success of one candidate over the other'.

**[20]** In my view the principles propounded by Ismail Khan J have equal application to the instant case which concerns an alleged improper acceptance of the 1st respondent's nomination paper for breach of reg. 4(3) and (5).

**[21]** In the circumstances, the alleged transgressions of election laws as pleaded in the petition, even if true, as claimed by the petitioner would not affect the result of the election as the mandatory requirement s. 32(b) of the Act had not be satisfied.

**[22]** It is also my considered opinion that the facts and grounds stated in para 4.1 of the petition does not fall within reg. 7(1)(c) and 7(1)(d). It is obvious that both regs. 7(1)(c) and (7)(1)(d) refer to the status of the candidate and not the status of a nomination paper. I agreed with SFC Amarjeet Singh that there is no allegation that the 1st respondent is not eligible to be a member of the Dewan Rakyat or is disqualified to be a member of the Dewan Rakyat as expressly provided under art. 47 and 48 of the Federal Constitution. A candidate may if he does not fill out his nomination normal paper properly have his nomination paper rejected but that does not mean that the candidate is not capable or is disqualified from being a member of Dewan Rakyat. Since the petitioner has failed to show a nexus between the complaints raised and the law alleged to have been transgressed, para. 4.1 is defective and ought to be struck out.

**[23]** Regulation 7(1) and 7(5) read with s. 32(b) of the Act contemplates that there was an objection raised that comes within the ambit of reg. 7(1) and that the 2nd respondent made a decision overruling the objection and in doing so did not comply with a provision of law relating to the nomination paper. It is therefore incumbent on the petitioner to show that (a) an objection was raised; (b) state the paragraph in reg. 7(1) that the objection falls within; (c) state that the returning officer overruled the objection; and (d) show the non-compliance with some provision of law relating to nomination papers that was not complied with by the returning officer when he made that decision.

**[24]** In para. 4.2 the petitioner merely states that the 2nd respondent failed to use his power under reg. 4(6) to reject the nomination paper of the 1st respondent because two out of three nomination papers did not bear the signature of the 1st respondent, but he failed to highlight any of the four requirements mentioned above.

**[25]** In the circumstances the petitioner has failed to show a nexus between the complaints raised and the first requirement of s. 32(b) of the Act. In absence of the facts and grounds concerning reg. 7(1) and 7(5) the petitioner has failed to satisfy r. 4(1)(b) as there is no cause of action to sustain the prayers sought.

**[26]** In para. 4.3 the petitioner merely alleges that 2nd respondent himself failed to raise an objection under reg. 7(3) against the nomination paper of the 1st respondent although he knew that two of the nomination papers did not contain the signature of the 1st respondent. He then alleged that the 2nd respondent did not prepare a written decision and written grounds for the decision as required by law. But he did not state which law.

**[27]** Both the complaints in para. 4.2 and 4.3 put forth by the petitioner did not fall within any of the paragraph in reg. 7(1). Failure of the 2nd respondent to raise objections, prepare written decisions and prepare written grounds for those decisions are not provided for in reg. 7(1). Regulation 7(1) is exhaustive and the petitioner cannot create new grounds not provided. Secondly, the petitioner has also failed to bring his factual situation under reg. 7(5) which refers to decisions by the returning officer in rejecting or accepting objections. Therefore the petitioner has failed to show a nexus between his narrated facts and the provisions of law he alleges are transgressed. As such there is a failure to satisfy s. 32(b) of the Act and consequently r. 4(1)(b).

**[28]** In *Gan Joon Zin v. Fong Kui Lun & Ors* [2004] 4 CLJ 729 the Federal Court held that an election petition must not only narrate the facts complained of but must also relate the complaints with the election laws alleged to have been transgressed. The Federal Court upheld what was stated by the Election judge:

In *Wan Daud bin Wan Jusoh*, *supra*, at p. 388 para F left, Wan Yahya J (later SCJ) held that a petition under r. 4 must not only narrate the facts complained of but must relate or associate the complaints with the provision of election laws the respondent is alleged to have transgressed.

...

Since the facts do not relate or associate the complaints with the provision of election laws alleged to have been transgressed, there is undoubtedly a failure to comply with rule 4(1)(b). [at p. 744]

**[29]** The Federal Court further held that:

It is sufficient merely to say that s. 32(b) is too clear for anyone to have any doubt that the election of a candidate may only be declared to be void on any one of the grounds provided therein. To avoid the election on ground (b) ie, of non-compliance with the relevant law, it must be proved that there was not only non-compliance but also that such non-compliance had affected the result of the election'. [at page 745]

**[30]** Finally, the contention of the petitioner that the Election court has inherent powers to declare Dr. Haji Khairuddin bin Dato' Haji Abdul Malik as the candidate that ought to be returned, is a prayer that is no longer open to the Election court as this relief was expressly deleted from s. 35(c) of the Act by Act A1177 with effect from 16 January 2003. It is the express intention of the legislature that the Election judge no longer has the jurisdiction to declare an unsuccessful candidate as duly returned anymore unless the prayer is for a scrutiny under s. 35(d) of the Act. In this case the petitioner is not asking for a scrutiny. Therefore by asking a prayer or relief that is no longer open, the petitioner has failed to satisfy r. 4(3) which states:

The Petition shall conclude with a prayer as for instance, that some specified person should be declared duly returned or elected, or that the election should be declared void, and shall be signed by all the petitioners.

**[31]** The petition can only conclude with a prayer that is allowed under s. 35 of the Act and not any other relief, especially a relief sought to be derived from the inherent powers of the Election court. The Election court is a creature of statute and is subject to limitations imposed by statute.

**[32]** For the aforesaid reasons I hold there is a failure to satisfy s. 32(b) of the Act and consequently r. 4(1)(b).

**The Prelimanary Objection (i)**

**[33]** By the above conclusion the preliminary objection (i) become academic. Be that as it may, I will deal with this objection briefly.

**[34]** To my understanding the complaints in objection (i) is that the notice of the presentation of the petition and the petition (after this the said documents) was not served on the 1st respondent within 15 days of the presentation of the petition as stipulated by r. 15. However, the submission of the learned counsel for the 1st respondent dealt very much on the issue of the mode of the services of the said documents on the 1st respondent, which I find is outside the ambit of their objection.

**[35]** As a fact I found that the affidavit of service (lampiran 14) clearly shows that the said documents was served on the 1st respondent personally on 6 May 2008 at the Parliament House but the 1st respondent refused to accept it.

**[36]** Affidavit of service (lampiran 15) had proven that the said documents have been served on the 1st respondent by way of AR Registered post and acknowledged receipt on 2 May 2008.

**[37]** Both services were good as they were done within 15 days as stipulated by r. 15(1).

**[38]** The next issue is the mode of service of the petition as required by r. 15(1)(a) which reads:

> 15 (1) Notice of the presentation of a petition, accompanied by a copy of the petition, shall, within fifteen days of the presentation of the petition, be served by the petitioner:
>
> (a) on the respondent personally which shall be effected by delivering the notice and a copy of the petition to the respondent

**[39]** The learned counsel for the 1st respondent argued that the service of the said documents was bad in law as it was not served by the petitioner himself. With due respect I do not agree. The word personally in that rule refers to the respondent and not the petitioner. That rule requires the said documents to be served on the person of the respondent to ensure that the respondent knew the case against him. If the intention of the legislature was that

the petitioner himself has to serve the said document, r. 15(1)(a) should read that the said documents '.. shall ... be served by the petitioner himself on the respondent personally ...'.

## Conclusion

**[40]** Under s. 32(b) of the Act, it is essential for the petitioner to not only plead non-compliance with the provisions of any written law relating to the conduct of any election but must also demonstrate that the alleged non-compliance caused the election to be not conducted in accordance with the principles laid down in such written law.

**[41]** It is essential for the pleadings to disclose that some principles pertaining to the conduct of the election had been breached. This is plainly not the case here. No principle of election law has been breached.

**[42]** Regulation 30(1) which stipulates:

> No election shall be invalid by reason of any failure to comply with any provision of these Regulations relating to elections if it appears that the election was conducted in accordance with the principles laid down in such provisions, and that such failure did not affect the result of the election.

clearly provides against invalidation of an election unless a principle has been contravened and if such contravention affected the result of the election.

**[43]** For the reasons aforesaid, I dismissed the petition. I hereby determine that Rafidah bt Abd Aziz was duly elected to the Perak Parliamentary constituency of P67 Kuala Kangsar.

## Costs

**[44]** If it was not for the silly mistake of the 1st respondent in not signing the other two copies of her nomination paper, this petition would not see the light of the day. I therefore ordered no costs against the petitioner.